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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,807	11/20/2001	Bernd Ullrich	WCH1-333	8840

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EXAMINER

GILL, ERIN M

ART UNIT PAPER NUMBER

2881

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,807

Applicant(s)

ULLRICH ET AL.

Examiner

Erin-Michael Gill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-67 and 76-89 is/are rejected.
- 7) ☒ Claim(s) 68-75 and 90 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 10/24/2001. It is noted, however, that applicant has not filed a *certified* copy of the 201 17 223.2 application as required by 35 U.S.C. 119(b). An express mailing certification was found included with the copy, however the certification required by 35 U.S.C. 119(b) is such that the certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

Claim Objections

2. Claims 47 and 85 are objected to because of the following informalities: In claim 47 "s" should be "is". In claim 85 "which" should be "with". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 59, 60 and 61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See MPEP §§ 2173.05 (c and d).

5. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10

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USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 59, 60, and 61 recite the broad recitations of a range of values, and the claims also recite a particular value (especially...), which is the narrower statement of the range/limitation.

6. Additionally Claim 80 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 46-57, 62-67 and 89 are rejected under 35 U.S.C. 102(b) as being anticipated by Kerschgens, US Patent No. 4560883 (hereafter Kerschgens). The locations of the references within Kerschgens are denoted parenthetically below.

9. Regarding claim 46, Kerschgens teaches a tanning module with a housing, a tridimensional reflector disposed in the housing (abstract), and at least one discoid radiation

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filter, wherein the at least one radiation filter covers the radiation emitting area of the reflector and is disposed on a first side of the housing (figure 1), at least one opening being provided in the reflector for the installation and electrical connection of a tanning radiator (figure 1), and the reflector having its maximum cross section in the plane of the radiation emitting area, characterized in that the housing is configured on a second side opposite the radiation filter in the form of a quadrilateral pyramid with a rectangular base and flattened pyramid apex and that the rectangular base faces in the direction of the at least one radiation filter (figure 5).

10. Regarding claims 47 and 57, Kerschgens teaches a tanning module according to claim 46, wherein at least one radiation filter is aligned parallel to the radiation emitting area of the reflector (figure 1 shows the filter 11 parallel to the emitter on all sides), wherein a perimeter of the reflector parallel to the radiation emitting area describes a circle (figure 1 shows a circle), an ellipse, a rectangle or a polygon.

11. Regarding claim 48, Kerschgens teaches, a tanning module according to claim 46, wherein the base of the pyramid is aligned parallel to the at least one radiation filter (the top of the radiation filter of figure 1 is parallel to the base of the pyramid).

12. Regarding claims 49 and 50, Kerschgens teaches, a tanning module according to claim 46, wherein the flattened pyramid apex is formed by a planar part of the housing wall, wherein the planar housing wall portion is aligned parallel to the base of the pyramid (figure 5).

13. Regarding claims 51 and 52, Kerschgens teaches, a tanning module according to claim 46, wherein the flattened pyramid apex is formed by a vaulted housing wall portion, wherein the vaulted housing wall portion is configured concavely or convexly with respect to the base of the pyramid (figure 4).

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14. Regarding claim 53, Kerschgens teaches, a tanning module according to claim 46, wherein a rectangular housing wall area adjoins the base of the pyramid. (Figure 5)

15. Regarding claims 54, 55 and 56, Kerschgens teaches, a tanning module according to claim 46, wherein the reflector is cupular or tub-shaped, wherein the bottom of the cupular or tub-shaped reflector is vaulted, wherein the dished or tub-shaped bottom of the reflector is made plane-parallel to the at least one radiation filter. (Figure 2 shows a tub shaped reflector 9, which as shown in figure 1 and described above is parallel to a radiation filter).

16. Regarding claims 62, 63, 64, 65, and 66 Kerschgens teaches, a tanning module according to claim 46, wherein the housing has at least one air exhaust opening in the area of the pyramid, wherein a flange is provided at the at least one air exhaust opening, wherein an air exhaust hose is connected to the flange, wherein a reducing disk is present to reduce the size of the air exhaust opening, wherein an air exhaust opening is arranged on each of three sides of the pyramid (claim 1 of Kerschgens includes a cooling means, and figure 2 shows a particular embodiment the means).

17. Regarding claim 67, Kerschgens teaches, a tanning module according to claim 46, wherein at least one mounting is disposed externally on the housing for electrical connections or components. (Figure 5)

18. Regarding claim 89, Kerschgens teaches, a tanning module according to claim 46, wherein a base is provided in the area of the at least one opening in the reflector for the mechanical and electrical connection of the tanning radiator. (Figure 5)

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 81-82 and 58-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerschgens, US Patent No. 4560883 (hereafter Kerschgens).

21. Regarding claims 81 and 82, Kerschgens teaches a tanning module according to claim 46, however fails to teach the air intake opening being present between the at least one radiation filter and the housing or in the housing between the at least one radiation filter and the reflector. It would have been obvious to one of ordinary skill in the art to make these modifications since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

22. Regarding claims 58-61, Kerschgens teaches the invention as claimed in claim 47 above however fails to teach the claimed dimension limitations. It would have been an obvious matter of design choice to modify the invention of Kerschgens, since lacking any showing of criticality one of ordinary skill in the art at the time the invention was made would have modified this invention to produce an identical tanning configuration to suit its conventional purpose.

23. Claims 85, 86, 87 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerschgens in view of Wijtsma US Patent No. 4839513 (hereafter Wijtsma). Kerschgens teaches all of the limitations of claim 46 however fails to teach the at least one touch contact disposed on the housing, with the least one radiation filter, wherein the touch contact is guided

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through the reflector perpendicular to the radiation emitting area of the reflector, wherein the touch contact is guided through the intake plate perpendicular to the radiation emitting area of the reflector or wherein to indicate breaking of the at least one radiation filter at least one touch contact is disposed on the intake plate and rests on the at least one radiation filter. The abstract of Wijtsma overcomes this by teaching all of the preceding limitations. It would have been obvious to one of ordinary skill in the art at the time the invention was made to integrate the invention of Wijtsma into the apparatus of Kerschgens because for the purpose of preventing radiation leakage when the filters are broken, the system of Wijtsma has been found preferable.

24. Claims 77, 78, and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerschgens in view in view of Wijtsma. Kerschgens teaches all of the limitations of claim 46 however fails to teach the at least one radiation filter being of rectangular shape. If one were to incorporate the apparatus of Wijtsma into the system of Kerschgens as per the reasons cited above, then the radiation filter would have a rectangular shape. Having the radiation filters a specific dimension without any showing of criticality is an obvious matter of design choice as described above.

25. Claims 76 and 80-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerschgens in view in Johannsen, James W. et al., US Patent No. 5736744 (hereafter Johannsen).

26. Regarding claim 76, Kerschgens teaches the tanning module according to claim 46, however fails to teach the at least one radiation filter being releasable from the housing through a swivelling mechanism. Johannsen figure 1 overcomes this limitation by teaching the inclusion of a hinge in a tanning module. Official Notice is taken that a hinge is a swiveling mechanism. It

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would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the invention of Johannsen into the system of Kerschgens because for the purpose of easily removing a filter, as suggested in Johannsen col. 2 lines 32-34, the apparatus of Johannsen is preferable.

27. Regarding claims 80-84, Kerschgens teaches the tanning module according to claim 46, however fails to teach the at least one radiation filter is an interference filter, wherein a first radiation filter is present, and plane-parallel thereto a second radiation filter the second radiation filter being disposed between the radiation emitting area of the reflector and the first radiation filter and the first radiation filter being the interference filter, wherein the second radiation filter is an ultraviolet filter or an infrared filter. Johannsen (abstract and figure 1) overcomes these limitations by teaching all of the claimed elements. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the invention of Johannsen into the system of Kerschgens because for the purpose of providing a multiple wavelength filtering system the apparatus of Johannsen has been found preferable.

Allowable Subject Matter

28. Claims 68-75 and 90 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: Claims 68 and 69, upon which all other claims depend, describe a unique configuration for circulating air in a UV emitting system. Prior art such as Kerschgens cited above do not include the adjustable plate system. Ericsson, Sylve J. D. US Patent No. 4989343 describes a cooling air configuration that use edge related apertures. However, the plate

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system in that apparatus was disposed between the lamp and a material that was to be further cooled with the air that has just cooled the UV lamp. Relocating this plate amounts to a critical difference and not a design choice because as disclosed by Applicant, this specific arrangement yields the result of an effective cooling of the system without the conventionally undesirable dead spots in the housing.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erin-Michael Gill whose telephone number is 703-305-7858. The examiner can normally be reached on M-F (8:30-5:00 EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on 703-308-4116. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



EMG
January 8, 2003



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